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ARKANSAS
CONTESTED ELECTION.

JOHNSON VS. GARLAND.

REPORT AND RESOLUTIONS OF THE COMMITTEE ON ELECTIONS.

The Committee on Elections, to whom was referred the petition of Jilson P. Johnson, claiming that he has been duly elected a member of the House from the third Congressional District of the State of Arkansas, and denying the right of Hon. A. H. Garland to his seat, and the other papers relating thereto, have had the same under consideration and ask leave to report.

In examining the papers referred to your Committee, they are of opinion that it will conduce to a proper understanding of the merits of the controversy, and a just and fair decision, to allow the parties to present their respective claims with greater precision and to take other proofs in relation to the issues which may be thus presented.

The contestant asks to be allowed to take evidence in reference to the vote of Arkansas county, and in assenting thereto, the Committee have thought it just to accord like privileges to both parties. Pretermittting the expression of any opinion upon the case as it now stands, for obvious reasons, the Committee report the matter to the House, and recommend the adoption of the accompanying resolutions.

W. N. H. SMITH, Chairman.

Resolved, That twenty days be allowed contestant to amend his notice, if he so desire. That the sitting member have thirty days after such amendment and notice thereof,

or of contestant's declining to amend, within which to make out his answer thereto, setting out the grounds on which he rests the validity of his own election, and denies the right of contestant to the seat; and that within ten days thereafter, he serve contestant with a copy of his answer.

That both parties be allowed sixty days after service of the answer, in which to take evidence in the case, and that the evidence to be taken be limited to the allegations and denials contained in the notice and answer, and that the evidence thus taken be forwarded to the House of Representatives, under the rules prescribed by an act of the United States of February 19, 1851, entitled "An Act to prescribe the mode of obtaining evidence in cases of contested elections."

REPORT OF THE COMMITTEE ON ELECTIONS.

The Committee on Elections, to whom was referred the petition of J. P. Johnson, praying to be allowed to contest the seat of A. H. Garland, and claiming the right thereto as Representative from the Third Congressional District of Arkansas, with the other papers pertaining to the case, have had the same under consideration and ask leave to make a report.

The report heretofore made, presented to the House the question of a further extension of time to enable the parties to come to distinct and specific issues, and to collect the evidence either might deem material thereto. The refusal of the House to proceed and the recommittal of the whole matter, if not to be taken as instructions, are nevertheless deemed clear indications of an intention that your Committee report the facts of the case and the points and merits of the controversy arising upon them in its present aspects. The duty thus imposed they now undertake to discharge.

Your Committee find that according to the returns from the several counties of the Third Congressional District of Arkansas, sent to the office of Secretary of State, as required by law, and published in the proclamation of the Governor on the 10th day of December, 1861, the sitting member, A. H. Garland, received two thousand one hundred and fifty-seven (2,157) votes, and the contestant, J. P. Johnson, received two thousand one hundred and twenty-five (2,125) votes, while four other candidates received a less number each. Upon this declared statement of the vote, the sitting member has a plurality of thirty-two votes over contestant, and was awarded the certificate of election. In arriving at these aggregates, the vote cast in Arkansas county, which alone is drawn in question before the Com-

mittee, is reported from that county by the returning officers in the following words:

"A. H. Garland received one hundred and seventy-five votes."

"J. T. Johnson received seventy-three votes."

And there are other votes reported for other candidates, which it is not necessary for a proper understanding of the case, to set out. The vote of the county is evidenced by what purports to be "an abstract of the returns of the election held in Arkansas county, State of Arkansas, on Wednesday, the 6th day of November, 1861, for a Representative to the Congress of the Confederate States of America for the Third Congressional District, as appears from returns made to this (the County Court Clerk's) office, and the abstract is certified by a Deputy County Court Clerk in the name and on behalf of his principal, Joseph H. Maxwell, in an official attestation and by two other persons, Lewis Thompson, a Justice of the Peace, and A. H. McDonald, a house-holder, to be a true statement of the polls of the election held in said county, on the 6th day of November, 1861, *according to the poll books returned and filed in his office.*" The certificate bears date the 13th day of November, the seventh day after the election.

A second return dated December 7th, and bearing the official attestation of the Clerk alone, was prepared by him and deposited with the Secretary of State, which, upon its face, also purports to be "a list of votes given on the 6th day of November, 1861, in Arkansas county, Arkansas, for Congress, and gives in detail the separate vote at the election precincts of the county. This return is declared to have been made after examination of the poll books, and to be *a full and correct list* of the votes, and gives the sitting member 186 votes and the contestant 98 votes." A certified copy of this return from the office of the Secretary of State, was placed in the hands of the Committee by the sitting member.

A third return, unexceptionable in form, certified officially by the Clerk and the same persons who certify the first, was prepared on the 10th of December, three days after the second, was transmitted to the Secretary of State, containing a tabular and specific statement of the vote of Arkansas county, as cast at the several precincts. The certificate declares that on examining the poll books it is ascertained that "A. H. Garland received 195 votes, and J. P. John-

son 135 votes, and that this is a true and correct abstract of the vote as returned from the several precincts in said county."

The evidence of these returns, consists in authenticated transcripts of papers on file in the office of the Secretary of State. Two such transcripts were before the committee, one of them was filed by contestant, with his petition and referred, containing the first and third returns only. The other was offered before the committee by the sitting member, and contains the first and second return.

By the first return, A. H. Garland is elected by a plurality of 32 votes; by the second, he is elected by a plurality of 18 votes; and by the last return J. P. Johnson is elected by a plurality of 8 votes.

Accompanying the transcripts, and certified by the same authority, was a copy of an explanatory letter or statement from the clerk, of the date of the last return, which as an unsworn declaration, and not of the kind required to be officially made, and thus become a record, your committee did not consider themselves at liberty to regard as evidence.

According to the laws of Arkansas, regulating elections, and which may be found in Gould's Digest, Chapter 62, two poll-books of election are kept by the judges at each place of balloting, one of which they retain in their own hands for public inspection, and the other is deposited within three days with the county court clerk. On the 5th day after an election, and sooner if the returns from the precincts are all in, these poll-books are to be compared, and an abstract thereof made out and sent by mail to the Secretary of State. If the returns have not been sent in, the clerk is required to despatch a messenger after such as are missing, and in this case, seven days are allowed for comparing the polls. The duty of comparing the polls and preparing the abstract is to be performed by the clerk and two justices of the peace, and if the latter cannot be conveniently had, two sworn householders in place of the justices, and this abstract with the certificate of at least two of the number attached, must be transmitted as already stated.

The statute directs the Secretary of State, if he fails to receive the abstracts for the two next succeeding mails after they are due, to send for such as are wanting, and when all have been received, or within thirty days if they have not, to cast up the votes from the different counties in presence of the Governor, and ascertain the result; and the Governor

is directed immediately thereupon by proclamation, to announce the same and award his certificate.

The ballots themselves cast at the several places of voting, are also required to be deposited by the judges with the county court clerk.

The attention of the committee has been called to the Act of the Congress of the United States, of February 19, 1851, in reference to contested elections, and its bearing upon the case.

This act requires a contestant to give notice of his intention to contest to the party declared to be elected within 30 days thereafter, and therein to specify particularly the grounds upon which he proposes to contest the right of the latter to his seat.

It requires the party thus notified, within 30 days thereafter, to deliver to the contestant a copy of his answer which must admit or deny the allegations made in the notice.

The other provisions of the statute relate mostly to the methods of taking proofs, and limit the evidence to the matters put in issue.

Various questions are presented upon this statement of the case to which the attention of your committee has been directed, and which they believe are disposed of in the conclusions to which they have come, and which they will proceed briefly to announce.

THE NOTICE.

The committee are of opinion that the notice given to Mr. Garland, on the 23d of December, as admitted by him, although less specific in its terms, than it might have been made, conforms, nevertheless, substantially to the requirements of the act, and is sufficient. It distinctly assigns error in the returns from Arkansas county, the correction of which by the poll-books would make a relative change of 40 votes and reversing the result, elect contestant by a plurality of 8 votes.

The election of Mr. Garland is impeached on this ground, and the notice directs his attention to it.

Your committee cannot allow to the failure of the sitting member to answer the allegations in the notice, the effect, without other proofs of dispossessing him of his seat, and still less of admitting contestant in his place. Analogies drawn from rules of pleading and practice, adopted in legal

tribunals in the investigation of personal controversies and which affect individual interests only, are entirely inapplicable to questions involving the privileges of the House, and the political rights of constituencies and States. Nor is there anything in the act of Congress which gives countenance to the argument based upon them. In the judgment of your committee, the range of their enquiries must be more comprehensive, and they are to ascertain who is elected and entitled to the disputed seat. If the evidence require, they may refuse the seat to both contestants and award it to a party not before them.

Your committee will not stop to point out all the difficulties of a proposition which requires them to take as conclusive the unanswered averments of a notice. They will present but a single one. Suppose there were two contestants, neither of whose notices is answered, to whom shall the seat be given? Or can the party in possession of the certificate, by answering one and refusing to answer the other at his own pleasure, transfer the seat to the one he may prefer? And might not a person ineligible under the Constitution, by this means become a member of the House.

Your committee could not then properly arrest the enquiries they are charged to make as to the right to the contested seat, but proceeded to examine such evidence as was produced before them, in order to determine upon its sufficiency to warrant them in reversing the decision of the Governor of the State.

It is to be observed that there are three distinct, independent and essentially conflicting abstracts, each certified by the officer having in custody the original, as true and made up from the one set of poll-books in his office. Of these the first only is within the extreme limit allowed by law, and is accepted and acted on by the Governor. It is certified by a deputy clerk, authorized by law, a justice of the peace and a householder, and in form complies with the requisitions of law. It does not appear that McDonald, the householder was sworn, and if the averment of his being sworn is deemed necessary to the validity of his act, which the committee are not prepared to admit, still the attestation of the other two is good and sufficient under the statute. It might be further suggested, if parol proof were admissible, to show that he was sworn, (and of this there seems to be no just grounds of doubt) whether the Governor must not be assumed to have had evidence of whatever was material to the va-

lidity of the return when he acted upon it. The second return is the act of but a single officer, and was prepared more than a month after the election. The third return is unobjectionable in form, but was made up still later, and could not have reached the Secretary of State, until the count required of him had been made, and the result of the election ascertained and declared. This must be apparent from the fact that the return and proclamation bear the same date.

But the committee are not restricted as was the Governor, and whether he should have considered the last return or not, they are to ascertain the true state of the vote. Upon the proofs before them, they are unable to report the vote of Arkansas County as differing from that declared in the proclamation. They know no principle upon which preponderance is to be given to the last of the conflicting returns and the first. Whether the discrepancy is the consequence of clerical error, or results from alterations made in the books during the interval—or because one is partial and the other full—or from some other cause, your committee will not undertake to infer, in the absence of any just principle of evidence, upon which such inference can be made. Official papers returned within time ought to be invalidated by others, not so returned, only upon clear and satisfactory proof of error. Such proof has not been given to your committee.

It is obvious that the only means of arriving at the true vote of Arkansas County would be the production of the poll-books themselves, of which there should be double sets, or authenticated copies direct from the office in which they are kept. This evidence would reveal the correct vote, while conflicting abstracts or copies successively sent to another office and thence certified to us never can. Or parol evidence might be produced in support of the correct return, if either be correct, and of the actual vote, if none are. The preservation of the ballots would facilitate the enquiry. Neither party has resorted to this original and primary source of evidence, in its nature decisive of the facts.

The sitting member holds his place upon the floor by the adjudication of the House on his *prima facie* title under the Governor's certificate. Your committee cannot, upon the facts before them, deprive him of the advantages he thus holds, and undertake to reverse the action of the executive authority of Arkansas.

After the committee had proceeded thus far in their investigations and conclusions upon the evidence before them, an

application was made by contestant, supported by affidavit for time to take other and further testimony as to the vote of the County of Arkansas. The committee understood the sitting member to ask that the privilege should be granted to him to take further evidence generally provided any time is granted for the purpose asked by contestant.

Your committee admit that the evidence submitted by contestant, though insufficient for the purpose of ousting the sitting member for reasons already stated, is yet of such force as to entitle the application for further time to respectful consideration. And as this is the first contested election case under our Government, as its decision and the rules established by it will be, for manifest reasons, entitled hereafter to much weight as a precedent, and as several of your committee seriously doubt whether the act of the Congress of the United States in such cases is of binding force, and certainly was not observed by either party thus far; your committee seeing that no damage could result to either the contestant or sitting member, or their constituency, resolved, as far as possible, and justice would admit, to seek to establish such a rule as would be a guide in future cases.

Your committee propose to act upon the case as if it had just arisen, and to suggest a reasonable time wherein a contestant must give notice of his purpose to contest, the time in which a sitting member must reply to such notice, and the time, and rules, &c., in which and under which evidence shall be taken. They propose that this House shall formally adopt the rules prescribed by the act of the Congress of the United States, and thus add to whatever force they may now have, the solemn sanction of the House in the first contested election case that comes before it.

They, therefore, report the following resolutions:

1. *Resolved*, That thirty days be allowed to contestant to amend his notice, if he so desire.

2. That the sitting member be allowed thirty days, after such amendment is made and notice thereof, or after notice of contestant's declining to amend, in which to make and serve his answer thereto on contestant, setting out in said answer the grounds on which he rests the validity of his own, and denies the election of contestant.

3. That after service of the answer, or expiration of the time limited therefor, sixty days be allowed the parties to take evidence, which shall be confined to the allegations and denials contained in the notice and answer, and that the

same be taken and transmitted to the House, under the rules prescribed by the Act of the Congress of the United States, approved February 19, 1851, entitled "An Act to prescribe the mode of obtaining evidence in cases of contested elections.

W. N. H. SMITH,

Chairman, etc.

MINORITY REPORT.

The undersigned two of the Committee on Elections, to whom was referred the petition of the Hon. J. P. Johnson, of Arkansas, "claiming the seat in the House as the Representative from the Third District in the State of Arkansas, and asking that he be permitted to contest the seat of the sitting member, the Hon. A. H. Garland," differing in their convictions from the majority of the Committee, beg leave to present this minority report.

In pursuance to law an election for Congressmen was held in the Third Congressional District of the State of Arkansas, on the 6th November, 1861, at which the contestant and the sitting member, together with others, were candidates, and as such voted for.

The District is composed of thirteen counties, the county of Arkansas being one. In the State of Arkansas the voting is by ballot, and it is made the duty of the judges of the several precincts to make out duplicate lists or poll books of the ballots or votes cast, one of which they are required to retain, and the other to return under cover of seal to the Clerk of the County Court, within three days after the election; but, if from any cause, the poll books should not be returned within three days from any one of the precincts, it is made the duty of the Clerk, on the next day (that is the fourth day after the election) to dispatch a messenger for the same.

The law further provides that if the poll books are all returned within the three days, it shall be the duty of the Clerk, on the 5th day after the election, to call to his assistance two justices of the peace, if to be had conveniently; if not, two householders, who being first *sworn*, shall proceed to open the poll books, and cast up the votes for each of the candidates, and make out an abstract of the vote as they may find it to be from the poll books.

In the event the poll books are not received within the three days, and a messenger is dispatched as contemplated by the statute, then the abstract is to be made out on the 7th day after the election.

The abstract thus made out is to be certified, and it is made the duty of the Clerk immediately to mail it in the nearest post-office, addressed to the Secretary of State at the Capital or Seat of Government, whose duty it shall be to file the same away in his office, under seal.

It is made the duty of the Governor and Secretary of State within thirty days, or sooner, if the returns are all in, to open the abstracts or certificates, and count up the vote, and the Governor shall then immediately issue a certificate of election to the person having the highest number of votes, and also his proclamation, announcing his election.

"See Gould's Digest Statutes of Arkansas, under the head of elections."

In this case, on the 13th November, seven days after the election, the Deputy Clerk, a justice of the peace and a house-holder opened the poll books of Arkansas County, and cast up the vote, and thereupon forwarded the abstract to the Secretary of State. This abstract shows that the sitting member received one hundred and seventy-five votes, and the contestant seventy-three votes. When this abstract reached the office of the Secretary of State does not appear, but it was on or prior to the 10th day of December, 1861. for on that day, acting upon this certificate or abstract, the Governor issued the certificate of election to Mr. Garland, and also issued his proclamation announcing the vote, which agrees with this first certificate.

On the 10th of December, 1861, the Clerk of the County Court, and the same justice and house-holder, by some means, learning a mistake had been made in counting the vote on the 7th November preceding, took the poll books and recounted the votes, and upon such recounting, discovered that the contestant had, in fact, received one hundred and thirty three votes, and the Hon. A. H. Garland one hundred and ninety-five. Assuming this last abstract to be the correct one, by adding the vote received by each in Arkansas county, to the aggregate vote of each in the other counties, there is a clear plurality in favor of contestant of eight votes. This last abstract reached the Secretary's office on the 11th December, one day after the Governor issued his certificate to Mr. Garland, and was received and filed in the Secretary's office. Accompanying the last abstract is the statement of the Clerk, that on the day the polls were first compared and the abstract was made out, he was engaged waiting upon the Circuit Court then in session, and the polls

were then compared by his deputy, the justice and the householder; and the Clerk, justice and householder all unite in praying the Governor to suffer them to withdraw the first and incorrect return, and substitute the last or true one. The true, or as it is called by the contestant, the corrected return, was on file within the thirty days allowed the Governor to grant the certificate and issue his proclamation, computing the time to commence running from the comparison of the polls, which we think is the obvious meaning of the Statute of Arkansas. It is proper to state, in this connection, that in the first abstract the aggregate vote of the county only is given, whereas, the last or corrected return, gives the vote by precincts. Upon this statement of facts the contestant, on the 14th day of December, gave the sitting member notice that he would contest his right to the seat, which notice Mr. Garland admits he received between the 21st and 23d of the same month. To this notice Mr. Garland did not respond within the time prescribed by the act of Congress passed in 1851, now in force in the Confederate States of America.

In his argument before the Committee he excepted to it, on the ground of indefiniteness and want of particularity. We do not propose to discuss the proposition in this report. We think the notice sufficiently acquaints the party with the grounds relied on by the contestant to establish his right to the seat, and in this opinion a majority of the Committee concurred. As before stated, Mr. Garland failed to answer the notice within the time prescribed by law, and in his response to the petition of the contestant he fails to controvert the fact charged, that the corrected list of the vote of Arkansas county, gives the contestant a majority of eight votes. What consequences, if any, flow from this failure? We think it operates as a confession of the facts alleged and taken in connection with the testimony adduced before the Committee, establishes Mr. Johnson's right to the seat in controversy.

Mr. Garland objected to the introduction of the last or corrected return as evidence, upon the ground that it was not made within the time prescribed by the law of Arkansas, and upon the further ground that the officers comparing the polls became immediately after making out and certifying the first abstract, *functi officio*, and had no right at a subsequent period to examine the poll books, and make out a new

and corrected abstract. The statutes of Arkansas invoked by him are merely directory and a non-compliance with their requirements on the part of State officials, either by a failure to make any return whatever, within the time required, or by a false and mistaken return of the vote cast, cannot, we think, affect the right of the parties, or restrain this body from a full investigation and a deliberate judgment of the results of a popular election.

This House, under the Constitution, is the sole judge of the *election* and return of its own members. This power is requisite to preserve a pure and genuine representation, and to the prevention of frauds and the correction of mistakes and blunders on the part of mere ministerial agents, in ascertaining and certifying the results of a popular canvass. No body can be too watchful, as this in guarding its own rights and privileges from infringement, in purifying and vindicating its own character, and in preserving and sustaining the free choice of its constituents. Guided, as we have been, we trust, by a sincere desire to do exact justice to the parties, and having in view the public interest, in seeing that each district is represented in this House by the members really and duly elected, we have arrived at the conclusion that the sitting member, the Hon. A. H. Garland, is not duly elected from the said Congressional District of the State of Arkansas, as a Representative to the first Congress of the Confederate States; but that the said contestant, the Hon. Jilson P. Johnson, was and is duly elected from said district, and is entitled to the seat as Representative from the same.

We therefore beg respectfully to express our decided dissent from the recommendation contained in the report of a majority of the Committee. The adoption of that report will, in our judgment, be productive of a long, tedious, and expensive controversy and investigation, not merely into the correctness of the returns from each county, but of the fairness and legality of every vote cast in the district. According to our understanding, the only question at issue between Mr. Johnson and Mr. Garland before the Committee, was relative to the vote in Arkansas county. There was no paper nor document before the Committee—not a scintilla of proof tending to show the existence of any mistake, fraud or mismanagement in the vote or in the returns from any other county.

And while we were of opinion that the poll books of the

county of Arkansas or testimony tending to elucidate the true vote of that county, might, with propriety, be brought before the Committee for the satisfaction of those who entertained doubts of the result there. We are satisfied that to throw open the door at this stage of the proceedings to an inquiry into the vote of the entire district, would result in establishing an unwise precedent in raising new questions, and prescribing other issues than those contemplated by the parties in the proofs and pleadings exhibited and evolved before the Committee.

WALLER R. STAPLES,
JNO. W. CROCKETT.

We do, therefore, offer the following resolution for the adoption of this House:

Resolved, That the Hon. Jilson P. Johnson is duly elected Representative from the Third Congressional District of the State of Arkansas, and as such is entitled to the seat in this House as the Representative from third district.

PROCLAMATION BY THE GOVERNOR.

STATE OF ARKANSAS.

To All to Whom these Presents shall come, Greeting:

Whereas, in compliance with law an election was held on the first Wednesday of November, A. D. 1861, in the 1st, 2d, 3d and 4th Congressional Districts of this State for the election in each of said Districts, of one Representative to represent the State of Arkansas in the House of Representatives of the Congress of the Confederate States of America, for and during the term of two years, which will commence with the 22d day of February, A. D. 1862, and end with the 21st day of February, A. D. 1864, and will embrace the first Congress of the Confederate States; And whereas, from the returns of said election on file in the office of the Secretary of State, it appears that in said First Congressional District the following named persons received the number of votes set under their names, to-wit:

COUNTIES.	Felix I. Batson.	H. F. Thompson.	R. F. Colburn.	Scattering.
Benton.....	490	131	7	
Washington.....	734	395	1	57
Madison.....	369	86	2	1
Carroll.....	498	159		
Newton.....	176	114		8
Crawford.....	188	316	14	
Franklin.....	359	128		
Johnson.....	508	23	4	
Pope.....	392	216	8	
Marion.....	147	76		1
Searcy.....	40	85		
Van Buren.....	113	100		
Conway.....	229	110		
Total.....	4,234	1,879	36	67

And in the Second Congressional District the following named persons received the number of votes set under their names, to-wit:

COUNTIES.	G. D. Royston.	A. S. Huey,	J. T. Bearden.	S. M. Scott.	A. G. Mayers.	Jno. F. Wheeler.	Green J. Clark.
Sebastian	20	6	4	1	450	107	90
Scott	78	15		15	32	8	74
Polk	195	2		16		3	
Sevier	487	57	56	5	9		6
Yell	179	114	49	1	20	15	4
Montgomery...	71	54	12	59			1
Pike	156	21	58	22		1	1
Hempstead.....	762	25	38	2	3	2	19
Lafayette.....	479	66	60	7			
Columbia.....	327	464	258	6		3	
Ouachita.....	257	336	301	14			8
Clark	230	83	14	303	3		2
Perry.....	76	29	2	4			
Hot Springs....	142	51	12	117			2
Total.....	3,459	1,323	864	572	523	139	207

Scattering, 10.

And in the Third Congressional District the following named persons received the number of votes set under their names, to-wit:

COUNTIES.	Jilson P. Johnson.	A. H. Garland.	B. C. Harley.	J. C. Murray.	S. F. Arnett.	W. P. Grace.	Scattering.
Pulaski.....	117	444	221	9	21	1	2
Saline.....	144	123	190	2	8	1	
Dallas.....	149	231	112		34	8	1
Calhoun.....	52	20	60	18	51	100	1
Union.....	172	343	194		1	14	2
Jefferson.....	348	70	58	98	7	105	
Bradley.....	165	73	183	130	17	99	
Drew.....	196	241	186	26	176	17	
Ashley.....	11	163	336	53	55	4	
Chicot.....	82	161	1	38	2	1	1
Desha.....	347	22		33	3	3	
Arkansas.....	73	175	10	93	6	8	1
Prairie.....	269	91	159	2	146	2	
Total	2,125	2,157	1710	527	514	263	8

And in the Fourth Congressional District the following named persons received the number of votes set under their names, to-wit:

COUNTIES.	T. B. Hanly.	Jas. H. Patterson.	Scattering.
Fulton	86	26	
Izard	231	15	
Randolph	117	151	
Lawrence	333	151	
Green	47	180	
Independence	438	132	
White	347	241	
Jackson	167	610	
Craighead	96	225	
Poinsett	195	27	
St. Francis	321	157	
Crittenden, no returns received,			
Mississippi	71	59	
Monroe	269	49	
Phillips	449	304	
Total	3,227	2,427	11

Making in the aggregate, in the First Congressional District, for Felix I. Batson, four thousand two hundred and thirty-four votes; for H. F. Thomasson, one thousand eight hundred and seventy-nine votes; for R. F. Colburn, thirty-six votes; scattering, sixty-seven. In the Second Congressional District, for G. D. Royston, three thousand four hundred and fifty-nine votes; for A. S. Huey, one thousand three hundred and twenty-three votes; for J. T. Bearden, eight hundred and sixty-four votes; for S. M. Scott, five hundred and seventy-two votes; for A. G. Mayers, five hundred and twenty-three votes; for John F. Wheeler, one hundred and thirty-nine votes; for Green J. Clark, two hundred and seven votes; and scattering ten votes. In the

Third Congressional District, for A. H. Garland, two thousand one hundred and fifty-seven votes; for Jilson P. Johnson, two thousand one hundred and twenty-five votes; for B. C. Harley, one thousand seven hundred and ten votes; for J. C. Murray, five hundred and twenty-seven votes; for S. F. Arnett, five hundred and fourteen votes; for W. P. Grace, two hundred and sixty-three votes; and scattering eight votes; and in the Fourth Congressional District, for Thomas B. Hanly, three thousand two hundred and twenty-seven votes; for James H. Patterson, two thousand one hundred and twenty-seven votes; and scattering eleven votes.

Now, therefore, I, HENRY M. RECTOR, Governor of the State of Arkansas, by virtue of the authority in me vested by law, do hereby declare and make known, that Felix I. Batson, in the said First Congressional District; Grandison D. Royston, in the said Second Congressional District; Augustus H. Garland, in the said Third Congressional District; and Thomas B. Hanly, in the said Fourth Congressional District, were at said election duly elected Representatives to represent the State of Arkansas in the House of Representatives of the Congress of the Confederate States of America, for the term of two years, which will commence on the 22d day of February, A. D. 1862, and will end on the 21st day of February, A. D. 1864, and will embrace the first Congress of the Confederate States.

In testimony whereof, I have hereunto set my
 { L. S. } hand and caused the seal of the State of Arkansas,
 to be affixed at Little Rock, this the 10th day of
 December, A. D. 1861.

H. M. RECTOR,

By the Governor:

JOHN I. STIRMAN, *Secretary of State.*

STATE OF ARKANSAS.

I, JOHN I. STIRMAN, Secretary of State of the State of Arkansas, do certify that the annexed and foregoing Proclamation by the Governor, H. M. RECTOR, of date 10th of December, 1861, is a true and perfect copy of the same on file in my office.

In testimony whereof I have hereunto subscribed my name
 { SEAL. } as such Secretary of State, and affixed the great
 seal of the State, at office in Little Rock, this 13th
 day of December, 1861.

JOHN I. STIRMAN, Secretary of State.

By E. W. STIRMAN, Deputy Secretary of State.

THE STATE OF ARKANSAS:

I, HENRY M. RECTOR, Governor of the State of Arkansas, and keeper of the Seal thereof, do hereby certify that John I. Stirman and E. W. Stirman, his Deputy, whose names are signed to the annexed instruments of writing, was at the time of signing the same Secretary of State, and E. W. Stirman Deputy Secretary of State, in and for the State of Arkansas, duly commissioned according to law, and that his attestation is in due form.

In testimony whereof, I have hereunto set my hand and
 { SEAL } caused the Seal of said State to be affixed at
 Little Rock, on the 13th day of December, A. D.,
 1861.

H. M. RECTOR.

By the Governor:

JOHN I. STIRMAN, *Secretary of State.*

By E. W. STIRMAN, *Deputy.*

An abstract of the returns of the election held in Arkansas county, State of Arkansas, on Wednesday, the sixth day of November, 1861, for a representative to the Congress of the Confederate States of America, for the Third Congressional District, as appears from the returns made to this office.

John C. Murry received ninety-three votes.

A. H. Garland received one hundred and seventy-five votes.

S. F. Arnett received six votes.

W. P. Grace received eight votes.

J. P. Johnson received seventy-three votes.

Thomas S. James received one vote.

B. C. Harley received ten votes.

I, Joseph H. Maxwell, Clerk of the Circuit Court and ex-officio Clerk of the County Court in and for the County of Arkansas, do hereby certify that the above statement of the polls of the election, held in said county, on the sixth day of November, 1861, is true according to the poll books returned and filed in my office according to law.

Given under my hand this 13th November, 1861.

(Signed.) JOSEPH H. MAXWELL, *Clerk.*

Per B. F. QUERTERMONS, D. C.

We, the undersigned, do hereby certify that the above is a correct abstract of the returns made to this office

Given under our hands this 13th November, 1861.

(Signed.)

LEWIS THOMPSON, J. P.
A. H. McDONALD.

Abstract from the poll books of the general election held in and for the county of Arkansas, in the State of Arkansas, on Wednesday the 6th day of November, 1861, for electors to elect a President and Vice-President for the Confederate States of America.

EDWARD CROSS,
DAVID WALKER,
JOHN R. HAMPTON,
H. L. GRINSTEAD,
W. C. BEVVENS.
W. W. MANSFIELD,
R. N. GAINES.

} Received 379 votes.

I, Joseph H. Maxwell, Clerk of the Circuit Court and *ex-officio* Clerk of the County Court, in and for the county of Arkansas, do hereby certify that the above statement of the polls of the election, held in said county on the 6th day of November, 1861, is true according to the poll-books returned and filed in my office according to law.

Given under my hand and the seal of said Court this 13th day of November, 1861.

{ L. S. }

JOSEPH H. MAXWELL, *Clerk.*

Per B. F. QUERTERMONS, D. C.

We, whose names are hereunto subscribed, do hereby certify the above is a correct abstract of the returns made to the office of the Clerk of the polls of the election held in said county, on Wednesday, the — day of November, 1861.

LEWIS THOMPSON, J. P.
A. H. McDONALD, Householder.

THE STATE OF ARKANSAS:

To all whom these presents shall come, greeting :

KNOW YE, that in compliance with law, an election was held on Wednesday, the sixth day of November, A. D.,

1861, in the Third Congressional District of this State, and it is hereby certified that, at said election A. H. Garland was duly elected a representative to represent the State of Arkansas in the House of Representatives of the first Congress of the Confederate States of America, for and during the term of two years, which will commence with the day of February, A. D., 1862, and end with the day of February, A. D., 1864, and will embrace the first Congress of the Confederate States.

In testimony whereof, I, HENRY M. RECTOR, Governor of the State of Arkansas, have hereunto set my hand
 { L. S. } and caused the Seal of said State to be affixed at Little Rock, Arkansas, this 10th day of December, A. D., 1861.

HENRY M. RECTOR.

By the Governor:

JOHN I. STIRMAN, *Secretary of State.*

DEWITT, ARKANSAS, Dec. 10th, 1861.

To His Excellency, HENRY M. RECTOR, *Governor of the State of Arkansas*, and JOHN I. STIRMAN, *Secretary of State*:

We, Lewis Thompson and Alva H. McDonald, who were called upon by Joseph H. Maxwell, Clerk of Arkansas county, on the 13th day of November, 1861, to examine and make out an abstract of the vote cast for President and Vice-President and President Electors, and also for members of Congress to represent this district (the 3d,) in the first Confederate Congress, ask that they be permitted to withdraw the abstract that they then made out, in order that they may be able to substitute the true and correct returns of the votes, as found by the poll-books in the office, in the county of Arkansas and State of Arkansas.

The correct return, or abstract, they now enclose, under cover of seal, and have dispatched Greene C. Crossen, as a messenger, to deliver the same to you, at office of Secretary of State, at Little Rock, which they pray you to receive and count, as the correct vote of the county of Arkansas, as made known by the elections at the different places of voting, in said county, on the 6th day of November, 1861, and

are to be found on file in the County Clerk's office, at De-Witt, the county site of Arkansas county.

Very respectfully, yours,

JOSEPH H. MAXWELL,
LEWIS THOMPSON,
A. H. McDONALD.

STATE OF ARKANSAS, }
COUNTY OF ARKANSAS. }

I, Joseph H. Maxwell, Clerk of the Circuit Court, and, *ex officio*, Clerk of the County Court within and for the county of Arkansas, do hereby certify that, at the time that the poll-books of the vote cast in this county, on the 6th day of November, 1861, for Presidential Electors and Congressman, were examined, I was engaged, waiting on the Circuit Court of my county, which was then in session, and the abstract made out by my deputy, Benjamin F. Quartermons, who is now in the army, and Lewis Thompson, Esq., and Alva H. McDonald, as shown by the poll-books of the different precincts of said county, was incorrectly counted, and the abstract on file in my office, a copy of which was sent to Little Rock, contained error, and was not the correct vote, as is shown by the poll-books, which was at that time in the office on file.

In testimony whereof, I have hereunto set my
{ L. S. } hand, and affixed the seal of my office, this the
{ } 10th day of December, A. D. 1861.

JOSEPH H. MAXWELL, *Clerk*.

STATE OF ARKANSAS, }
COUNTY OF ARKANSAS, }

At an election held at the several precincts in Arkansas County, Arkansas, on the sixth day of November, A. D. 1861, pursuant to notice, for the purpose of electing one member to Congress of the Confederate States of America, from the 3d District of the State of Arkansas, whereupon the following named persons, candidates for Congress, re-

ceived the number of votes opposite their respective names, viz :

Names of Candidates.	Cypress Bayou Township.	Arkansas Township.	Douglas Township.	Old River Township.	Vellemont Township.	Bayou Mltre Township.	Morris Township.	Polk Township.	Crockett Township.	Prairie Township.	La Crev Township.	Total vote.
A. H. Garland.....	17	7	11	1	13	2	11	19	22	51	11	135
J. P. Johnson.....	...	9	40	39	9	...	...	35	...	1	..	133
John C. Murray.....	...	16	1	...	1	6	...	5	5	..	63	97
S. F. Arnett	...	...	1	...	1	2	...	3	1	1	..	9
Wm. P. Grace.....	...	...	4	...	4	...	...	...	...	...	..	8
Thos. S. James	...	...	...	...	...	1	...	...	...	...	..	1
B. C. Harley.....	...	...	...	...	...	...	...	...	...	1	9	10

STATE OF ARKANSAS, }

COUNTY OF ARKANSAS. }

We, JOSEPH H. MAXWELL, Clerk of the Circuit Court and ex-officio Clerk of the County Court, in and for said county, and LEWIS THOMPSON, an acting and duly commissioned Justice of the Peace, in and for said county, and ALVA. H. McDONALD, a householder and resident of said county of Arkansas, first being duly sworn according to law, do hereby certify that we have this day examined the poll-books of the election above mentioned, and that A. H. Garland received 195 votes; J. P. Johnson, 133 votes; John C. Murray, 97 votes; S. F. Arnett, 9 votes; Wm. P. Grace, 8 votes; Thos. S. James, 1 vote, and B. C. Harley, 10 votes, and that the above is a true and correct abstract of the votes as returned from the several precincts in said county of Arkansas.

Given under our hand, this, the 10th day of December,
A. D., 1861.

JOSEPH H. MAXWELL, Clerk.
LEWIS THOMPSON, J. P.
A. H. McDONALD, Householder.

STATE OF ARKANSAS, }

COUNTY OF ARKANSAS. }

I, JOSEPH H. MAXWELL, Clerk of the Circuit Court and ex-officio Clerk of the County Court in and for said county,

do hereby certify that the within, above and foregoing transcript is a true and perfect copy of the original one made out by myself, LEWIS THOMPSON, and A. H. McDONALD, on the 10th day of December, 1861, as the same is now in my office on file.

{ SEAL }

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, this, the 10th day of December, 1861.

JOSEPH H. MAXWELL, Clerk.

STATE OF ARKANSAS, }
COUNTY OF ARKANSAS. }

At an election held at the several precincts in Arkansas county, in the State of Arkansas, on the 6th day of November, 1861, pursuant to notice, for the election of electors to vote for President and Vice President of the Confederate States of America, the following persons, candidates for electors, received the number of votes opposite their respective names, viz:

ELECTOR'S NAMES.	Cypress Bayou Township.	Arkansas Township.	Douglass Township.	Old River Township.	Vellemont Township.	Bayou Metre Township.	Morris Township.	Polk Township.	Crockett Township.	Prairie Township.	LaGrew Township.	Total Vote.
Edward Cross.....	17	64	66	41	33	14	11	60	29	93	85	511
David Walker	17	64	66	41	33	14	11	60	30	93	74	503
H. L. Gunsted	17	64	66	41	33	14	11	60	30	93	83	512
W. C. Bevins	17	64	66	41	33	14	11	60	30	93	83	512
W. W. Mansfield.....	17	64	66	41	33	14	11	60	30	93	83	512
John R. Hampton.....	17	64	66	41	33	14	11	60	30	93	83	512
R. M. Gaines	..	64	..	3	33	..	..	10	..	6	4	120

STATE OF ARKANSAS, }
COUNTY OF ARKANSAS. }

We, JOSEPH H. MAXWELL, Clerk of the Circuit Court and ex-officio Clerk of the County Court, in and for the said county, assisted by LEWIS THOMPSON, an acting and duly commissioned Justice of the Peace for said county, and A. H. McDONALD, householder and resident of Arkansas coun-

ty, do hereby certify that we have this day compared the poll-books of the election above-mentioned, and that the above is a true and correct abstract of the vote as returned from the several precincts in said county.

{  }
SEAL
{  }

Given under our hands, this 10th day of December, 1861.

JOSEPH H. MAXWELL, Clerk.

LEWIS THOMPSON, J. P.

A. H. McDONALD, Householder.

STATE OF ARKANSAS, }
COUNTY OF ARKANSAS. }

I, JOSEPH H. MAXWELL, Clerk of the Circuit Court and ex-officio Clerk of the County Court, in and for the county aforesaid, do hereby certify that the within and foregoing abstract is a true, correct, and complete copy of the original one made out by myself, LEWIS THOMPSON, and A. H. McDONALD, on this, the 10th day of December, 1861, as the same appears on file in my office.

{  }
SEAL
{  }

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, this, the 10th day of December, 1861.

JOSEPH H. MAXWELL, Clerk.

STATE OF ARKANSAS, L. S.

I, John J. Stirman, Secretary of State of the State of Arkansas, do certify that the annexed and foregoing nine half sheets contain a true, complete, and perfect transcript of the original election returns, papers and documents, and the endorsements thereon on file in my office, relating to the election held in the county of Arkansas, in said State, for Electors and a member to the Confederate Congress, &c., on the 6th of November, 1861.

In testimony whereof I have hereunto subscribed my
{  } name as such Secretary of State, and affixed the
{ SEAL } Great Seal of the State at office in Little Rock,
~~~~~ this 13th day of December, 1861.

JOHN J. STIRMAN,

*Secretary of State.*

By E. W. STIRMAN, *Deputy Sec'y of State.*

## THE STATE OF ARKANSAS.

I, Henry M. Rector, Governor of the State of Arkansas, and keeper of the Seal thereof, do hereby certify that Joseph H. Maxwell, whose name is signed to the annexed instruments of writing, was at the time of signing the same, Clerk of the Circuit Court, and ex officio Clerk of the County Court in and for the county of Arkansas, in said State, duly commissioned according to law, and that his attestation is in due form.

In testimony whereof, I have hereunto set my hand and  
 { ~~~~ } caused the Seal of said State to be affixed at Little  
 { SEAL } Rock, on the 13th day of December, A. D., 1861.

~~~~ By the Governor: H. M. RECTOR.

JOHN I. STIRMAN, *Secretary of State.*

Per E. W. STIRMAN, *Deputy.*

An abstract of the returns of the election held in Arkansas county, State of Arkansas, on Wednesday, the 6th day of November, 1861, for a Representative of the Congress of the Confederate States of America, for the Third Congressional District, as appears from the returns made to this office:

John C. Murray received ninety-three votes;

A. H. Garland received one hundred seventy-five votes;

S. F. Arnett received six votes;

W. P. Grace received eight votes;

J. P. Johnson received seventy-three votes;

Thomas S. James received one vote;

B. C. Harley received ten votes.

I, Joseph H. Maxwell, Clerk of the Circuit Court, and, *ex officio*, Clerk of the County Court in and for the county of Arkansas, do hereby certify that the above statement of the polls of the election, held in said county on the sixth day of November, 1861, is true, according to the poll-books returned and filed in my office, according to law.

Given under my hand this 13th November, 1861.

(Signed,)

JOSEPH MAXWELL, *Clerk,*

per B. F. QUERTERMONS.

We, the undersigned, do hereby certify that the above is a correct abstract of the returns made to this office.

Given under our hands this 13th November, 1-61.

(Signed,)

LEWIS THOMPSON, J. P.
A. H. McDONALD.

A list of votes given on the 6th day of November, 1861,
in Arkansas County, Arkansas, for Congress.

| CANDIDATES. | Arkansas Post. | LaGrew. | Cypress Bayou | Prairie. | Crockett. | Polk. | Morris. | Bayou Metre. | Vellemont. | Old River. | Douglas. | Total Vote. |
|--------------|----------------|---------|---------------|----------|-----------|-------|---------|--------------|------------|------------|----------|-------------|
| Garland..... | 7 | 11 | 17 | 81 | 22 | 10 | 11 | 2 | 13 | 1 | 11 | 186 |
| Johnson..... | 9 | .. | .. | 1 | .. | .. | .. | .. | 9 | 39 | 40 | 98 |
| Arnett..... | .. | .. | .. | 1 | 1 | .. | .. | 2 | .. | .. | 1 | 5 |
| Murray..... | 16 | 63 | .. | .. | 5 | .. | .. | 6 | .. | .. | 1 | .. |
| Hanley..... | .. | 9 | .. | 1 | .. | .. | .. | .. | .. | .. | .. | .. |
| Grace..... | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | 4 | .. |
| James..... | .. | .. | .. | .. | .. | .. | .. | 1 | .. | .. | .. | .. |

STATE OF ARKANSAS, }
COUNTY OF ARKANSAS. }

I, Joseph H. Maxwell, Clerk of the Circuit Court, and, *ex officio*, Clerk of the County Court in and for the county aforesaid, do hereby certify that I have examined the poll-books of the Congressional election held in said county, on the 6th day of November, 1861, and that the above and foregoing abstract is a full and correct list, and that I found that A. H. Garland received 186 votes, J. P. Johnson received 98 votes, S. F. Arnett received 5 votes, J. C. Murray received 91 votes, Hanley 10 votes, Grace 4 and James 1.

In testimony whereof I have hereunto set my
{ L. S. } hand, and affixed the seal of my office, the 7th
{ } December, 1861.

JOSEPH H. MAXWELL, *Clerk*.

EXECUTIVE OFFICE, }
LITTLE ROCK, Dec. 11th, 1861. }

This return, made by the Clerk of the County of Arkansas, is deemed by me inadmissible, for the reasons—

1st. It was not returned within the time prescribed by law.

2nd. It was not sent in the *mode* prescribed by law.

3d. It is invalidated by the second paper, or certificate of the same date, sent me through the same channel, marked No. 2. The Clerk stated, in his No. 1, the vote of Polk township to be, for Garland 10 votes; in No. 2 he certifies that the vote of Polk township is not found in his office.

(Signed,)

H. M. RECTOR,
Governor of Arkansas.

SECRETARY OF STATE'S OFFICE,
LITTLE ROCK, ARKANSAS. }
February 4, A. D. 1862. }

I, John I. Stirman, Secretary of State of Arkansas, hereby certify that the foregoing two pages of abstracts and returns and certificates of election, sent up by Joseph H. Maxwell, who is the Clerk of the Circuit Court, and, *ex officio*, Clerk of the County Court in and for the County of Arkansas, in the State of Arkansas, and also the page attached, which contains the opinion of Henry M. Rector, Governor of the State of Arkansas, is a true, literal, and perfectly compared copy of the original documents of the same purport, now on file in this office.

In testimony whereof, I, John I. Stirman, Secretary of the State of Arkansas, do hereunto set my hand, { SEAL } and affix my official seal of office, on the day and year first above written.

JOHN I. STIRMAN,
Secretary of State.

ABSTRACT of Votes given for Representatives to the Congress of the Confederate States of America, in the 3d Congressional District, held on the 6th day of November, A. D., 1861.

| COUNTIES. | A. H. Garland. | B. C. Harley. | J. P. Johnson. | S. F. Arnett. | J. C. Murray. | W. P. Grace. | Bertrand. | Gantt. |
|----------------|----------------|---------------|----------------|---------------|---------------|--------------|-------------|-------------|
| | Votes. | Votes. | Votes. | Votes. | Votes. | Votes. | Votes. | Votes. |
| Pulaski.. .. . | 444 | 221 | 117 | 21 | 9 | 1 | 1 | 1 |
| Saline..... | 123 | 190 | 144 | 8 | 2 | 1 | | |
| Dallas..... | 231 | 112 | 149 | 84 | | 8 | | |
| Calhoun..... | 20 | 60 | 52 | 57 | 18 | 100 | | 1 |
| Union..... | 343 | 194 | 172 | 1 | | 14 | | 1 |
| Jefferson..... | 70 | 58 | 318 | | 98 | 105 | | 2 |
| Bradley..... | 73 | 183 | 165 | 17 | 136 | 99 | | |
| Drew..... | 241 | 186 | 196 | 176 | 26 | 17 | | |
| Ashley..... | 163 | 336 | 11 | 55 | 53 | 4 | | |
| Chicot..... | 161 | 1 | 82 | 2 | 30 | 1 | | 1 |
| Desha..... | 22 | | 347 | 3 | 33 | 3 | | |
| Arkansas..... | 175 | 10 | 73 | 6 | 93 | 5 | | 1 |
| Prairie..... | 91 | 159 | 269 | 146 | 2 | 2 | | |
| Total | 2157 | 1710 | 2125 | 527 | 514 | 263 | Scattering. | Scattering. |

STATE OF ARKANSAS:

I, JOHN I. STIRMAN, Secretary of the State of Arkansas, do hereby certify that the foregoing abstract of the votes cast at an election held in the third District of the State of Arkansas, on the 6th day of November, A. D., 1861, is a true and perfect copy of the same as made out by the Governor, in connexion with the Secretary of State, as required by law. On file in my office.

In testimony whereof, I have hereunto set my hand as such Secretary of State, and affixed the seal of the State of Arkansas at office this the 13th day of December, A. D., 1862.

JOHN I. STIRMAN,
Secretary of State.

By E. W. STIRMAN,
Deputy Secretary of State.

LITTLE ROCK, ARKANSAS, }
December 14th, 1861. }

To Hon. A. H. Garland :

SIR: The corrected vote of Arkansas county gives me a majority of eight votes over you in the aggregate of the vote cast at the election held in this State on the 6th of November, 1861, for members to Congress, and as the certificate of election has been granted to you, I hereby notify you that I will contest your right to a seat in the Confederate Congress by virtue of the same.

Very respectfully,

J. P. JOHNSON,

I certify the above is a true copy of a letter placed in the hands of Col. A. H. Rutherford, to be left at the House of the Hon. A. H. Garland, in the city of Little Rock, this December 14th, 1861.

JOHN D. KIMBALL.

RICHMOND, January 23d, 1862.

Hon. A. H. Garland :

DEAR SIR: By the instruction and request of Jilson P. Johnson, Esq., who was one of your competitors in the recent election in the Third District of the State of Arkansas, for a seat in the first Congress of the Confederate States of America, I notify you that it is his intention to contest your right to a seat in said Congress.

I am further authorized and requested by him to state as the grounds upon which he feels compelled to make this contest, that the returns of the election in said district upon which were based the action of the Governor and Secretary of State of the State of Arkansas, in their award to you of the certificate of election to Congress, were erroneous in this, that by the election returns of the county of Arkansas, it appears that you received *one hundred and seventy-five* votes, and that he received *seventy-three* votes; whereas, in truth and in fact, and by the corrected election returns of the said county, a true copy whereof is herewith submitted, it appears that you received *one hundred and ninety-five* votes, and he received *one hundred and thirty-three* votes. Thus he alleges that by the error or the omission of the officers

making the returns of the said county of Arkansas, he is deprived of many votes, say forty, which were cast for him by citizens of said county. And which said votes added to the residue which had been cast for him throughout the said district, constituted in his favor a majority over yourself, and a plurality over all competitors.

He further deems it proper to state, that the returning officers of said county when they had discovered the error or omission aforesaid, made out anew a true and corrected set of returns of the election for Congress in said county, and transmitted the same to the Secretary of State, at the capital of said State; but that the same were not received until after the certificate of election in your favor had been executed and delivered.

Believing, as he does not doubt, that he was duly and legally elected to Congress, he regards it as an obligation under our representative system of government, and as a duty to the voters of the District, that he should contest your right to the said certificate before the House of Representatives, and should, accordingly, give you this notice of the fact.

I am, sir, very respectfully,

Your obedient servant,

R. W. JOHNSON.

AFFIDAVIT OF J. P. JOHNSON.

RICHMOND, VA., }
March 12th, 1862. }

Jilson P. Johnson states on oath that when the Governor had issued his certificate of election to Hon. A. H. Garland, he consulted counsel, and gentlemen learned in the law, at Little Rock, and was advised by them, and verily believed, that the abstract of the votes of the County of Arkansas, made by the Clerk, the Justice of the Peace and the Householder, on the 10th of December, 1861, was official and competent evidence, and when applied to the documents necessary to show its operation and effect, would be sufficient to establish the error which he alleged in his notice to Mr. Garland, and would entitle him to succeed in his petition, and that it would not be in anywise necessary for him to take any other proof.

That he acted on this advice, and his own conviction of its correctness, and therefore made no effort to obtain any other proof, except the documents contained in the statement of the case and read in evidence.

He did not believe, until after he had reached Richmond, on the 13th day of February, that there would be a contest for the seat; but after his arrival here, learning from Mr. Garland, for the first time, that he would insist upon his claim to the seat; Mr. Garland being a lawyer, while the affiant was not, he consulted and retained counsel, and caused him to examine the documents.

He was then informed, for the first time, that it was possible the committee might sustain objections of Mr. Garland to his evidence, and require the production of the copy of the abstracts of the votes received and recorded at the several precincts of the county of Arkansas, returned and on file in the Clerk's office, or other evidence of a higher grade; but that in such event the affiant would certainly

be allowed to offer further proof, and be given time to obtain and produce it, and that the case could and would be conducted in a mode which would entitle him to a motion for that purpose.

He states that he does verily believe that the error alleged in the abstract of the votes of the County of Arkansas, made up and certified on the 13th of November, was erroneous, as stated in his notice and petition, and that the abstract of the 10th December does show truly the number of votes given for Mr. Garland and himself in that county, and that this fact will appear by a compilation of the abstracts returned in due time into the clerk's office of the county, and that reasonable time being allowed, he will be able to show the fact by any grade of evidence the committee shall require.

He asks for a postponement of the final hearing of the case, in order that evidence may be obtained which will show the truth with the highest degree of certainty, and justice thereby certainly done, and not merely for delay.

J. P. JOHNSON.

Sworn to and acknowledged before me, March 12, 1862.

W. N. H. SMITH, Chairman, &c.

Petition of Jilson P. Johnson to the Hon. the Speaker and Members of the First Congress of the Confederate States of America—Presented February 18, 1862.

Your petitioner, JILSON P. JOHNSON, of the county of Desha, State of Arkansas, respectfully represents, That an election was held in the 3d Congressional District of said State of Arkansas, composed of the counties of Pulaski, Saline, Dallas, Calhoun, Union, Jefferson, Bradley, Drew, Ashley, Chicot, Desha, Arkansas, and Prairie, on the 6th day of November, 1861, for a representative to Congress in accordance with a law of the Provisional Congress of the Confederate States of America, at which your petitioner was a candidate for delegate from said Congressional district, and as such was voted for.

That on the 10th day of December, 1861, H. M. Rector, Governor of the said State of Arkansas, issued his proclamation declaring that your petitioner had received 2,125 votes, and that A. H. Garland, one of the competitors of your petitioner, had received 2,157 votes in said district, and further declaring that the said A. H. Garland was duly elected representative from the said 3d Congressional District "to represent the State of Arkansas in the House of Representatives of the Congress of the Confederate States of America, for the term of two years," to commence on the 22nd day of February, 1862.

And that the said H. M. Rector, Governor of the State of Arkansas as aforesaid, in his said proclamation as aforesaid, declared that in the county of Arkansas in said 3d district, your petitioner had received 73 votes, and that his said competitor, A. H. Garland, had in said county, received 175 votes.

Your petitioner states that the said H. M. Rector, Governor of the State of Arkansas as aforesaid, in proclaiming the said vote of the said county of Arkansas, was in great, and as your petitioner thinks will be made to appear, manifest error, and in proclaiming that the said A. H. Garland was duly elected representative from the 3d district aforesaid in likewise great error.

Your petitioner states that Joseph H. Maxwell, Clerk of the county of Arkansas, by B. F. Quertermans Deputy Clerk, on the 13th day of November, 1861, certified that your petitioner received but 73 votes in said county, and that the

said A. H. Garland received but 175 votes in said county, which was also certified to by Louis Thompson, J. P., and A. H. McDonald, persons duly authorized by law to examine and certify to the election returns from said county, all of which will be more fully shown by reference to page "3" of the record, filed herewith and made part of this petition; but your petitioner further states that a reference to pages "6" and "7" of the said record will show that on the 10th day of December, 1861, the said Joseph H. Maxwell, Lewis Thompson and A. H. McDonald petitioned and asked the Governor and Secretary of State of the State of Arkansas permission to withdraw the certificate, "and abstract" that they made out on the 13th of November, 1861, "that they might be able to substitute the *true* and correct returns of the votes as found by the poll books in the office in the county of Arkansas and State of Arkansas," and that they "enclosed under cover of seal" a true and correct abstract of votes, and "despatched Green G. Corsen as a messenger to deliver the same" to the Governor and Secretary of State of Arkansas.

That they prayed the said Governor and Secretary of State "to receive and count the correct vote of the county of Arkansas;" and your petitioner further states that as will be seen, by reference to page "7" of said record, on the 10th day of December, 1861, Joseph Maxwell, Clerk of said county of Arkansas, certified that on the "examination of the poll books in said county, made on the 13th November, 1861, he was engaged waiting on the Circuit Court of the county," that the books were examined by his "deputy, Benjamin Quertermans," who is now in the army, that the abstract made out on the 13th November, "contained error," and was not the correct vote as is shown by the poll books which were at that time in "his office."

Your petitioner further states, that, as will appear by reference to page 8th of said record, on the 10th day of December, 1861, the said Joseph H. Maxwell, Clerk, and Lewis Thompson, J. P., and A. H. McDonald, certified that your petitioner had received 133 votes, and the said A. H. Garland had received 195 votes in the said county of Arkansas, at the election held on the 6th day of November, 1861, for representative in Congress, from which it will appear that the true number of votes cast in said 3d District was for your petitioner 2,185, and that the true number of votes cast for the said A. H. Garland, in said 3d

District, was 2,177, making a clear plurality in favor of your petitioner of 8 votes.

Your petitioner has thus, as he thinks, conclusively shown that at said election he received the largest number of votes for representative from the said 3d district, and is truly and fairly the representative elect from said District.

He, therefore, prays, that he may be admitted a representative from the 3d District of Arkansas to the first Congress of the Confederate States of America, and be permitted to take his seat as a member of the House of Representatives in said Congress.

And, as in duty bound, will ever humbly pray,

J. P. JOHNSON.

RESPONSE OF A. H. GARLAND TO PETITION OF
J. P. JOHNSON.

*To the Honorable the Committee of Elections of the House of
Representatives of the Congress of the Confederate States of
America :*

The petition of Jilson P. Johnson, of Arkansas, now before you, protesting against my right to a seat in Congress as a Representative of the 3d District of Arkansas, and setting forth his claims to the same, and praying for a decision in favor of his claims, demands from me a response, which I now submit to you for your consideration.

It is true there was an election held in said 3d District of Arkansas as said petition states, and the Governor of Arkansas, Henry M. Rector, issued his proclamation on the 10th of December, 1861, and in such proclamation, among other things, it was set forth that I was duly elected a Representative from said district to the Congress of the Confederate States.

On the same day of the issuance of said proclamation, the said Governor, under his signature and official seal, in due form of law, issued to me a certificate of such election, which is now on file with the papers of Congress.

I deny, most emphatically, that the petitioner has shown that the Governor of Arkansas committed any error in proclaiming either the vote of Arkansas county, or the result, of the whole vote; and I deny, also, that the pretended papers or evidences submitted by petitioner show any such error, in law or in fact.

From an inspection of the papers accompanying the petition, it does appear that the certificates of Maxwell, as clerk, and Thompson and McDonald as householders, were made out and sent to the office of the Secretary of State as alleged.

And from those papers it seems that two different returns were made out by the clerk of Arkansas county and sent to the Secretary of State, the first on the 13th of November, 1861, and the other on the 10th of December, 1861. The first return from that county, made out 13th November, 1861, is the one upon which the Governor made his calculation, and upon which, with the returns from the other counties, the proclamation of the Governor and the certificate of election issued.

Now, beyond this return, I object to the consideration of any other that may be before the Committee, and for these reasons:

By the laws of Arkansas, (Gould's Digest, chapter 62, page 472, section 56,) it is provided that within three days after the polls are closed, one of the books shall be sent to the clerk of the county, and the other kept by the judges for the inspection of all persons. Section 58 provides that that if the poll-book is not sent in within the time allowed, the clerk of the county shall send a messenger for it, and in that event the polls shall not be compared till the 7th day. Section 60 provides that on the fifth day after the election, *or sooner, if all the returns are in*, the clerk, with two justices of the peace of the county, if they can be conveniently had, and if not, then two householders, shall proceed to open and compare the several election returns which have been made to his office, and make abstracts of the votes given for the several candidates. The returns from Arkansas county, upon which my election was proclaimed, being made out on the 13th of November, came directly within the time named in section 58, but those upon which the petitioner claims his election were not made out until a month and four days after the election, and could not, in any view, have been received by the authorities in estimating the vote. And the returns of the 13th November purport to be full and complete, that is, the vote of the whole county.

Section 71 makes it the duty of the Secretary of State to send a messenger to every county from which returns have not been received for two mails after the same are due. In this case no messenger was sent, as none was needed, the returns having been made out and sent up regularly and in due time.

By section 73, the Secretary of State, in the presence of the Governor, is required to cast up the votes of the district within thirty days after the time allowed to make returns,

or sooner, if all the returns shall have been received; and after casting up the vote, the Governor shall immediately issue his proclamation and a certificate of election. In this instance, all the returns being received, (*just a month and four days after the election,*) the Governor, after the vote was cast up, issued the proclamation and the certificate exactly, and in strict accordance with the law; and certainly it does appear that this is sufficient to decide the case. The returns from Arkansas county, dated 13th November, are made out and certified by the deputy clerk, who, under the law of Arkansas, has as full power to do this as his principal. (See same Digest, chap. 30, page 248, sec. 12)

Again, when the clerk and the two householders made out one set of returns and sent them to the Secretary of State, their duties were discharged, and as to this matter they were, so to speak, *functus officio*, and the law gives them no authority to meet again and make out new returns. Their act in making out another set of returns was a mere voluntary act, and of no higher authority than if any three private citizens had done the same thing. Were this not so, an election would be endless. Admit this can be done, and receive these returns and give the petitioner the seat, and I might return to Arkansas and get another certificate by these gentlemen, and come to Congress and deprive him of his seat, and so it might continue without limit.

And the receiving of these last returns at the office of the Secretary of State was an act of like character, without authority of law.

But on what principle of law or reason can we receive contradictory certificates of clerks to these facts—one to me to-day, and to-morrow an entirely different one to some other person! By this process all the seats in the Congress may be filled by other persons than those now holding them,—and the rights of society itself completely unsettled.

Moreover, this last certificate of the clerk does not pretend to set forth the particular error complained of. It does not state when, where or how the error was committed, nor when, where and how discovered. In the returns of the 13th November, the mere aggregate vote is given, in the other the vote is pretended to be given by townships, but yet no attempt is made to point out the precise difficulty. So the first certificate is certainly, to say the least of it, of as high grade as the second—is equally in form, and meets the requirements of the law. It cannot be set aside by this

other—a mere gratuity, or favor on the part of these gentlemen.

It is plain, then, if there is any difficulty in the returns, after the clerks have sent them to the Governor, it is not for the Governor to go behind the certificate of the clerk; he must take the record as it comes to him; he cannot alter or amend it, but the only way to meet it is to bring the poll-books and the ballots before Congress, and there trace out the error. This jurisdiction rests alone in Congress, and this is the testimony upon which to proceed, upon the familiar principle, that the best evidence of which the case will admit must be furnished; and if you wish to go behind a clerk's certificate and the Governor's proclamation and certificate, to correct a mistake in election returns, this is the only evidence that exists upon which to make the correction. From these the clerks in the first instance makes out his estimate, and if error is committed it is there, and the books and ballots compared, alone will show it. In cases of contested elections, the law of Arkansas provides for the opening of the ballots filed with the clerk (section 59), doubtless to prevent the very thing that is attempted to be done here by clerk's certificates, and certificates of private citizens, to correct errors or mistakes in counting out the votes.

I must protest, upon another strong ground, against this last certificate being received. After the clerk and the householders had performed their duty and sent up the returns in my favor, which entered into and formed part of my right to the seat in Congress, I was certainly entitled to notice of the time and place of making this recount. It was a matter of some importance to me to know this and be there, or represented, even if they had the authority to do this at all, which I here positively deny. To be confronted by the opponent's witnesses, or to be notified of the time and place of taking proof to affect one's claims, have always, in our country, been regarded as the dearest of his rights, and I know of no good reason why it should be disregarded and ignored in a contest for a seat in a nation's Congress.

When these gentlemen were gravely at work making this recount, I was here at the Capitol trying to do my duty as a member of the Provisional Congress—hundreds of miles distant from the place of their convocation, and was entirely ignorant of the fact, that this great work was going on.

If it is admitted, however, that the certificate relied on by the petitioner be correct and legitimate, it only proves at

last that my majority in Arkansas County is only 62 votes instead of 102, as set forth in the count of the votes on the 13th November. There are twelve other Counties in the District, and from all of them returns were received and calculated. While this pretended error may have occurred in Arkansas County, others of the same kind may have taken place in other Counties as against me. If the vote of Arkansas County be not as the Governor proclaimed it, may not all or some of the others be misstated? And while the petitioner rejects one part of the proclamation, he seems to rely upon it, and make it the basis of his claim here, in all others! If the question of errors and mistakes in the votes of the Counties be an open one, I simply request the privilege of examining and comparing the votes of the other Counties to ascertain who is really elected. It may be, as there were some seven candidates, that neither the petitioner or myself is elected! This is strongly impressed upon my mind, as a very intelligent and highly respectable citizen of Union county, Arkansas, in a letter of the 23d ultimo, informed me that I had received six more votes in that county than the returns gave me, *and this could be proved by the poll-books*. This letter I have, and am ready at any time to produce it before the committee. And I must ask the right to have the necessary examination and proof taken in the cause to establish the true state of the case throughout the District, if the committee determine there is showing enough to justify an enquiry into the matter at all. This is due to those who claim rights here, to the people of the District, as well as the whole State of Arkansas.

However, the most interesting feature of this remarkably interesting case is this: On the 7th of December, 1861, the clerk of Arkansas county makes out another abstract of the vote, by townships, and certifies to it, and sends it to the Governor of Arkansas, to take the place of the first one made out, dated November 13th, 1861. In this return of the 7th of December, (which, for the sake of designation, let us call it the *intermediate return*,) the petitioner received 98 votes, and myself 86 votes, which reduces my majority from the first count 14 votes, but still leaves me elected by 18 votes. This certificate is from the same clerk, and prior in time to the one relied on by the petitioner, and is, beyond question, entitled to as much consideration, and is herewith presented, marked X, and asked to be received as part of this response; it is authenticated in the same man-

ner as the papers of the petitioner are. His papers are no evidence, nor is this one alluded to—but if his are, this is—and the result is, I am elected at last, “the best two in three,” which, the world over, is considered decisive and conclusive. If the committee will consider his papers, I request a kind consideration of this one, which then must leave the official acts of the Governor to decide the case. In other words, the very contradiction of these papers must throw such doubts over the matter as to leave it to be determined by the certificate—which is the highest and best evidence of the legal right, not to be set aside on mere doubt, but only in cases of clear mistake or fraud, and those cases clearly and fully made out. All official acts have the benefit of the presumption that they are done rightly, and when they are impeached for fraud or mistake, the particular fraud or mistake must be distinctly pointed out and distinctly proved.

Then, briefly, the petitioner's evidence is not admissible for any purpose. If admissible, it proves nothing and does not meet the case.

And, if admissible, I offer evidence of the same dignity which contradicts it directly; and with this contradiction in the case, the certificate of the Governor properly and regularly issued under the law as recited, must be received as conclusive.

I beg pardon for saying so much, but I could not well say less. I crave the earnest attention of the committee to the points suggested, and hope they may aid the committee in coming to some just conclusion in the premises.

Respectfully,

A. H. GARLAND.

RICHMOND, February 20th, 1862.

X

A list of votes given on the 6th day of November, 1861, in Arkansas County, Ark., for Congress.

[Here follows the vote by townships.]

STATE OF ARKANSAS, COUNTY OF ARKANSAS :

I, JOSEPH H. MAXWELL, Clerk of the Circuit Court, and *ex officio*, Clerk of the County Court in and for the County aforesaid, do hereby certify that I have examined the poll-books of the Congressional election, held in said County on the 6th day of November, 1861, and that the above and foregoing abstract is a full and correct list, and that I found that A. H. Garland received 186 votes; J. P. Johnson received 93 votes; S. F. Arnett received 5 votes; J. C. Murray received 91 votes; Harley, 10 votes; Grace, 4, and James 1.

{ SEAL. } In testimony whereof I hereunto set my hand
and affix the seal of my office the 7th December,
1861.

Signed,

JOSEPH H. MAXWELL, *Clerk*.

Here follow the certificates of the Secretary of State, &c., that these returns were received, &c., &c.







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